



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-S-, INC

DATE: JAN. 19, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software development and testing company, seeks to employ the beneficiary as a senior software testing engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director found that the evidence of record did not establish that the Beneficiary met the minimum educational requirements for the offered position.

On appeal, the Petitioner asserts that the Director misinterpreted the evidence and submits additional materials concerning the Beneficiary's educational qualifications.

Upon *de novo* review, we will dismiss the appeal.

I. LAW AND ANALYSIS

A. The Employment-Based Immigration Process

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

By approving the labor certification in this case, DOL certified that U.S. workers are not able, willing, qualified, and available for the offered position of senior software testing engineer. *See* section 212(a)(5)(A)(i)(I) of the Act. DOL also certified that the Beneficiary's employment in the position

will not hurt the wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i)(II) of the Act.

In these proceedings, we must determine whether the Beneficiary meets the requirements of the offered position certified by the DOL. We must also determine whether the Beneficiary qualifies for the requested immigrant classification. *See, e.g., Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service “makes its own determination of the alien’s entitlement to [the requested] preference status”).¹

B. Beneficiary’s Possession of the Education Required by the Labor Certification

A petitioner must establish a beneficiary’s possession of all the education, training, and experience specified on an accompanying labor certification by a petition’s priority date. 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).² In evaluating a beneficiary’s qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

In this case the labor certification states that the offered position of senior software testing engineer requires a U.S. master’s or foreign equivalent degree in a field of study concentrating in information technology, applied mathematics, or computer information systems. The labor certification also states that no experience is required, and that no alternate combination of education and experience is acceptable.

On the labor certification the Beneficiary attested that her highest level of education relevant to the job offered was a master’s degree with a concentration in information technology from [REDACTED] in [REDACTED] Belarus, completed in 2013. As evidence of this educational credential the Petitioner submitted photocopies of a diploma and transcript, in [REDACTED] with English translation, showing that the Beneficiary received a diploma of higher education specializing in “Economics and Industrial Engineering (radioelectronics and informational services)” and was granted the qualification of engineer-economist, from [REDACTED] in [REDACTED] Belarus, following the completion of a five-year degree program. The Petitioner also submitted an excerpt from the Educational Database for Global

¹ Here, the Petitioner has requested advanced degree professional classification. In order to be eligible for this classification, the Beneficiary must possess an advanced degree. The term “advanced degree” means “any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.” 8 C.F.R. § 204.5(k)(2).

² The priority date of a petition is the date the DOL received the underlying labor certification application for processing. *See* 8 C.F.R. § 204.5(d). In this case, the priority date is November 13, 2014.

Education (EDGE) on the [REDACTED] educational credential “Diploma of Specialist” which described the degree as awarded upon completion of five to six years of study at an institution of higher education and advised that it was comparable to a master’s degree in the United States. In addition, the Petitioner submitted four expert opinions regarding the U.S. equivalency of the Beneficiary’s [REDACTED] degree from [REDACTED] of [REDACTED] of [REDACTED] and [REDACTED] of [REDACTED]

All of these evaluations concluded that the Beneficiary’s degree from [REDACTED] was equivalent to a master’s degree in economics with a concentration in information technology from an accredited university in the United States.

In denying the petition the Director found that the Beneficiary’s specialization in economics and industrial engineering was not in one of the fields of study required on the labor certification. The Director also reviewed EDGE, the database created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),³ which indicated that a diploma of higher education represents a level of education comparable to a bachelor’s degree in the United States. The Director analyzed the four evaluations of the Beneficiary’s degree, found that they contained substantive and methodological inconsistencies, and concluded that their U.S. equivalency determinations were unreliable.

On appeal the Petitioner asserts that the Beneficiary’s degree program at [REDACTED] included a concentration of courses in the field of information technology, which satisfied the field of study requirement on the labor certification. The Petitioner also asserts that the Director’s review of the [REDACTED] website for information about the [REDACTED] educational system was erroneous because the Beneficiary earned her degree at [REDACTED] not [REDACTED]. The Petitioner contends that the Director accorded undue weight to EDGE as a resource for assessing the U.S. equivalency of the Beneficiary’s foreign degree, and that the Director’s discounting of the evaluations submitted by the Petitioner was improper. According to the Petitioner, the degree earned by the Beneficiary at [REDACTED] was actually a specialist’s diploma, and thus equivalent to a U.S. master’s degree.

We agree that the Beneficiary’s coursework in her degree program at [REDACTED] met the field of study requirement of the labor certification. The Petitioner is also correct that [REDACTED] and [REDACTED] are separate institutions of higher education, and the Beneficiary’s degree is from [REDACTED]. However, we do not agree with the Petitioner’s assertion that the Director gave undue weight to the current EDGE report and improperly discounted the educational equivalency evaluations submitted by the Petitioner. Federal courts have found EDGE to be a reliable, peer-reviewed source of foreign

³ AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in over 40 countries.” www.aacrao.org/about (last visited Jan. 16, 2018). According to its registration page, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” <http://edge.aacrao.org/info.php> (last visited Jan. 16, 2018).

⁴ We note that in the labor certification (part J, box 14) the institution where the Beneficiary earned her degree was misidentified as [REDACTED], not [REDACTED].

educational equivalencies. *See, e.g., Viraj, LLC v. U.S. Att’y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (holding that USCIS may discount submitted opinion letters and educational evaluations submitted if they differ from reports in EDGE, which is “a respected source of information”).

Evaluations of educational credentials by evaluation services and individual evaluators are utilized by USCIS as advisory opinions only. We may reject or give less evidentiary weight to expert opinions that conflict with evidence in the record or are “in any way questionable.” *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). The [REDACTED] evaluation does not discuss, or even identify, any of the coursework completed by the Beneficiary at [REDACTED]. It purports to rely “upon copies of documents provided by [the Beneficiary]” but does not identify the documents referenced or describe their contents with specificity in the evaluation. Nor does the evaluation explain the basis for its conclusion that the academic program the Beneficiary completed at [REDACTED] absent any discussion of the particular courses it encompassed, is “substantially similar” to a bachelor’s and master’s degree program in the United States.

The [REDACTED] evaluation, a revised version of which is submitted on appeal, states that it is “based on unverified educational documents” but does not identify those documents or describe their contents with specificity in the evaluation. [REDACTED] identifies six of the Beneficiary’s courses in the field of information technology (IT), asserts that they total 82.1 credits representing the equivalent of 30 semester credit hours, and characterizes the “credit hour” in U.S. higher education as a variant of the “Carnegie Unit” to measure academic credit, with 15 classroom hours equaling one semester credit hour.⁵ According to the evaluation, the Beneficiary’s degree totaled 9,198 classroom hours, equating to 613 semester credit hours, which exceeded the 600 semester credit hour threshold for a bachelor’s degree plus a master’s degree in the United States. Aside from the six IT courses, however, [REDACTED] does not identify or discuss any of the other courses taken by the Beneficiary at [REDACTED] and how the Beneficiary’s coursework as a whole compares to the coursework of an analogous degree program in the United States. Moreover, according to the Carnegie Foundation, the Carnegie Unit does not apply to higher education.⁶ While the [REDACTED] evaluation asserts that it utilizes a variant of the Carnegie Unit in evaluating the U.S. equivalency of the Beneficiary’s higher education degree from [REDACTED] its probative value is limited due to the lack of any comparison between the Beneficiary’s coursework at [REDACTED] and the coursework of an analogous degree program in the United States.

The [REDACTED] evaluation lists the courses taken by the Beneficiary at [REDACTED] her grades, and the “credits” awarded for each course. The evaluator asserts that credits for all of the Beneficiary’s courses add

⁵ The Carnegie Unit was adopted by the Carnegie Foundation for the Advancement of Teaching in the early 1900s as a measure of the amount of classroom time that a high school student studied a subject. The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center. *See* The Carnegie Foundation for the Advancement of Teaching, <https://www.carnegiefoundation.org/who-we-are/foundation-history/> (last visited Jan. 16, 2018).

⁶ The Carnegie Foundation for the Advancement of Teaching, *The Carnegie Unit: What is it?*, <http://system.suny.edu/media/suny/content-assets/documents/faculty-senate/ugrad/TheCarnegieUnit.pdf> (last visited Jan. 16, 2018).

up to 638.7 “semester credit hours,” but the evaluation does not explain how the credits per course were calculated and the significance of 638.7 as the total number of semester credit hours. The evaluation does not equate the Beneficiary’s credits for her coursework at [REDACTED] to credits issued by an accredited college or university in the United States, and does not compare the Beneficiary’s coursework at [REDACTED] to the coursework of an analogous degree program in the United States.

The [REDACTED] evaluation, a slightly revised version of which is submitted on appeal lists all of the Beneficiary’s courses from [REDACTED] her grades, and recommends “credits” to each course ranging from 1 to 10, adding up to 157 “recommended semester credit hours.” The evaluation does not explain, however, how the credits recommended for each course were calculated, and does not explain the significance of 157 as the total number of recommended semester credit hours. Moreover, the evaluation does not equate the Beneficiary’s credits for her coursework at [REDACTED] to credits issued by an accredited college or university in the United States, and does not compare the Beneficiary’s coursework at [REDACTED] to the coursework of an analogous degree program in the United States.

As noted, we may reject or give less evidentiary weight to expert opinions that conflict with evidence in the record or are “in any way questionable.” *Matter of Caron Int’l, Inc.*, 19 I&N Dec. at 795. For the reasons discussed above, we are not persuaded by the educational evaluations of [REDACTED] and [REDACTED] that the Beneficiary’s degree from [REDACTED] is equivalent to a master’s degree in the United States.

In view of the substantive shortcomings of the evaluations, USCIS did not err by consulting EDGE as another source of information about the U.S. equivalency of the Beneficiary’s foreign degree.⁷ The evidence initially submitted by the Petitioner included an old report for a [REDACTED] diploma of specialist, which states that this credential is awarded after five or six years of university study, and is comparable to a U.S. master’s degree. The Beneficiary’s degree, however, is not a diploma of specialist. Rather, it is a diploma of higher education, as stated on the document itself and affirmed on the English translation submitted in this proceeding.

Furthermore, EDGE no longer includes a separate entry for this credential. Rather, EDGE equates a [REDACTED] diploma of higher education, reflecting four or five years of university study, to a U.S. bachelor’s degree. The updated report states that a diploma of higher education follows four to five years of university study. The updated report also states: “The Diploma of Higher Education is also

⁷ In *Confluence Int’l, Inc. v. Holder*, No. 08-2665 (DSD/JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009), the court determined that we provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D.Mich. Aug. 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien’s three-year foreign “baccalaureate” and foreign “Master’s” degree were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc. v. USCIS*, No. 09-13605, 2010 WL 3325442 (E.D.Mich. Aug. 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

often referred to, and sometimes written as, Diploma of Specialist.” Thus, EDGE’s updated report on the [REDACTED] diploma of higher education accords with the Beneficiary’s diploma, which she received after five years of study. Furthermore, we reached out to the EDGE Admin Group with respect to the updated entry, and they indicated that: “The consensus of the IESC [International Education Standards Council] then [prior to the update] and now is that this is a first degree comparable to a US bachelor’s degree. Any other indication is an error that, if made, was certainly not perpetuated.” The IESC is responsible for vetting the credentials listed in EDGE.⁸ In accord with the current EDGE report on the diploma of higher education in Belarus, we find that the Beneficiary’s credential is comparable to a U.S. bachelor’s degree.

Based on the foregoing analysis, we conclude that the Beneficiary does not meet the labor certification’s minimum educational requirement of a master’s degree.

C. Beneficiary’s Eligibility for Advanced Degree Professional Classification

Although not discussed by the Director, the record also does not establish that the Beneficiary qualifies for classification as an advanced degree professional. A beneficiary of a petition in the requested classification must hold an advanced degree or its equivalent. Section 203(b)(2)(A) of the Act. The term “advanced degree” means “any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.” 8 C.F.R. § 204.5(k)(2). As discussed above, the Petitioner has not demonstrated that the Beneficiary has the foreign equivalent of a U.S. master’s degree. Furthermore, although the record establishes that the Beneficiary earned the foreign equivalent of a U.S. bachelor’s degree on June 30, 2013, the Beneficiary did not have five years of post-baccalaureate experience by the priority date of November 13, 2014, as needed to qualify for classification as an advanced degree professional.

II. CONCLUSION

The record does not establish that the Beneficiary possesses the minimum educational requirement for the offered position as specified on the labor certification. Nor does the record establish that the Beneficiary qualifies for classification as an advanced degree professional. On each of these grounds the petition may not be approved. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of E-S-, Inc*, ID# 084248 (AAO Jan. 19, 2018)

⁸ <http://www.aacrao.org/committees/?committee=IESC> (last visited Jan. 16, 2018).